

General Information Letter: Offset of joint return overpayment against Retailers' Occupation Tax liability of husband was not shown to be improper.

February 11, 1999

Dear:

This is in response to a letter dated December 22, 1998, from Mr. xxxxxx x. xxxxxxxx xx. to the Office of the Comptroller, in which Mr. xxxxxxxx objected to the offset of a 1997 income tax refund payable on the joint return you filed with your wife against a liability assessed against you under Section 3-7 of the Uniform Penalty and Interest Act as a person responsible for the payment of a trust tax who willfully failed to make such payment. Mr. xxxxxxxx did not attach a power of attorney indicating his authority to represent you in this matter. Accordingly, I am responding to you directly.

In his letter, Mr. xxxxxxxx stated the following:

Please use this letter as our protest to the withholding of the 1997 income tax refund of \$314.00.

Taxpayer's wife, who is not liable for any State taxes, was the wage earner who paid in to the State, in the form of withholding \$314 and is entitled to the full refund.

A copy of her W-2 for 1997 and a copy of the State Income Tax Return are enclosed for verification.

Response

Our records show that, for the taxable year 1996, you received wages of \$17,200, from which \$498.20 in Illinois Income Tax was withheld. Your wife received wages of \$24,739.74, from which \$722.80 was withheld. In addition, estimated taxes of \$102 were paid for 1996.

The joint Illinois Income Tax return filed by you and your wife for 1996 showed a tax liability of \$1,439. Against this liability, you claimed a credit for real estate taxes paid on your residence of \$430, the \$1,221 withheld from wages of both yourself and your wife, and the \$102 in estimated taxes, for a total of \$1,753. You requested that the \$314 overpayment be credited against your estimated tax liability for 1997.

On the joint Illinois Income Tax return filed by you and wife for 1997, you did not claim a credit for the \$314. Your return showed an underpayment, which you paid in full. The Department later discovered that you had failed to claim a credit for the \$314 and credited it to your account for 1997, thereby producing an overpayment. It was this overpayment that was offset by the Office of the Comptroller.

Based on these facts, the assertion of Mr. xxxxxxxx that the \$314 is attributable solely to amounts withheld from your wife cannot be sustained. Accordingly, there are no grounds for refunding that amount to her.

Sincerely,

Paul S. Caselton
Associate Chief Counsel -- Income Tax